

# EDITORIALS

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## 'Hired Guns' in Court

FOR BOTH DOCTORS and lawyers their professional expertise is their stock in trade. They sell it in exchange for professional fees, offer it in return for a retainer or salary, or sometimes contribute it gratis to some worthy cause. But the expertise is quite different for a doctor and for a lawyer. Each discipline has a very different frame of reference and each has a very different approach to getting at the truth. Since courts are the turf of lawyers it is not unusual for doctors, whether wittingly or otherwise, to find themselves and their medical expertise being used as instruments of the legal expertise of the lawyers. Because each discipline tends to seek truth and recognize it differently, the whole truth as seen by the doctor may be eluded or evaded by the manipulations of expert lawyers in behalf of either plaintiff or defendant or both.

The Specialty Conference elsewhere in this issue draws attention to the role of an expert medical witness in court. The term "hired guns" is used to describe qualified expert medical witnesses who will give expert testimony to support the cause of the plaintiff or defendant as the case may be, and for a fee or not as the case may be. And too often there is a disquieting spectacle of a number of qualified medical experts giving quite different opinions based upon what appears to be much the same information. While all of this is cricket as the game is played in the adversary framework of a trial in court, often it seems to fall somewhat short of presenting the judge or jury with all the medical information needed, in a way which will help them to make the fairest and most correct decision.

One cannot help but be reminded of the quite recently established legal doctrine of informed consent. Here the decision maker is the patient, rather than a judge or jury, and the doctrine calls upon the physician to fully inform the patient of

all the medical options, and of the pros and cons of each, so that he or she may make a fully informed decision. A parallel to the decision makers in a court trial seems obvious. The role of the expert medical witness should be less that of a "hired gun" for the plaintiff or defendant, and more that of a physician with the professional expertise to present to the court the current state of the art and science of medicine with respect to the problem at hand. This having been done, the court would then be in a position to make a truly informed decision much as a patient should be able to under the doctrine of informed consent.

Could it be that the time has come to apply the basic principle of full disclosure of the current state of the art and science of medicine (which underlies the concept of informed consent) to the role of the expert medical witness in a court of law? If this were done the truth, as it is understood in the discipline of medicine with respect to any given issue, could be more fully and accurately presented within the adversary framework of a courtroom trial, including full disclosure where there is difference of opinion—and the need for "hired guns" in court might actually become a relic of the past.

—MSMW

## *Clostridium difficile*: A New Enteric Pathogen

ELSEWHERE IN THIS ISSUE, W. Lance George has nicely summarized recent data implicating *Clostridium difficile* as the cause of antibiotic-associated pseudomembranous colitis (PMC). PMC is regarded as an infrequent but serious adverse drug reaction, and has been studied extensively for more than three decades. Earlier work sug-